IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WA.No. 1772 of 2007

AGAINST THE JUDGEMENT IN OP.31514/2002 Dated 23/01/2007

APPELLANT: PETITIONER

K.SADASIVAN, PALAZHIMATHIPURAM VEEDU,
PULIMKUDI, MULLOOR P.O., KOTUKAL VILLAGE,
NEYYATTINKARA, THIRUVANANTHAPURAM DIST.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS: RESPONDENTS

1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR, THIRUVANANTHAPURAM.

3. TAHSILDAR, NEYYATTINKARA, THIRUVANANTHAPURAM.

4. VILLAGE OFFICER, KOTTUKAL PANCHAYAT,
KOTTUKAL P.O., THIRUVANANTHAPURAM DIST.

5. LAND TRIBUNAL, THIRUVANANTHAPURAM.

6. APPELLATE AUTHORITY(LAND REFORMS)
DEPUTY COLLECTOR, THIRUVANANTHAPURAM.

7. SYAMALA DEVI, BHAGTHIVILASOM BUNGLOW,
PUNLINKUDI, MULLOOR P.O., VIA.VIZHINJAM,
THIRUVANANTHAPURAM DISTRICT.

SPECIAL GOVERNMENT PLEADER SRI.C.T.RAVIKUMAR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 1772 OF 2007

Dated this the 19th July, 2007

JUDGMENT

SANKARAN, J.

The petitioner in O.P.No.31514 of 2002 is the appellant herein. The petitioner (K.Sadasivan) applied for assignment of an extent of 13 cents of land on registry, by his application dated 23.10.1996. The seventh respondent (Syamala Devi) made an application for assignment of the land on 22.10.1993. Pending those proceedings, the petitioner obtained Ext.P11 order from the Land Tribunal on his application under Section 80B of the Kerala Land Reforms Act and Ext.P12 purchase certificate was also issued. When it is admitted that the land is the government land, it is not known how the petitioner could apply before the Land Tribunal under Section 80B of the Kerala Land Reforms Act. The seventh respondent filed application as O.A.No.152 of 1999 to cancel Ext.P11 purchase certificate. The Land Tribunal passed Ext.P13 order cancelling Ext.P11 purchase certificate. Though the petitioner filed appeal against that order, it was dismissed as per Ext.P14 judgment. It would appear that the petitioner again made an application as per Ext.P15 for assignment of the land.

2. There was a writ petition as O.P.No.4633 of 1997, filed by the petitioner contending that he is entitled to get assignment of the land in question and praying for the issue of a writ of mandamus to

the respondents concerned to assign the land on registry in his favour. That Original Petition was disposed of as per Ext.P7 judgment dated 22.7.1997 holding thus:

> "When there is assignable land belonging to Govt., naturally that can be assigned only after certifying the same and inviting applications from the eligible landless persons. Neither the petitioner nor the 6th respondent can exclusively claim the land. If it is found to be as assignable land, the Govt. or revenue officers are free to take steps to assign the land after notifying the same and inviting applications and finding out the most eligible landless person. Therefore, the petitioner cannot get a direction as prayed for."

Though the petitioner filed W.A.No.1712 of 1997, no interference was made by the Appellate Court while disposing of the appeal as per Ext.P8 judgment dated 13.1.1998. The seventh respondent was not issued with any notice in the Writ Appeal. She challenged the very same Ext.P7 judgment in another writ appeal, which was disposed of as per Ext.R7(a) judgment dated 23.9.2002, which reads as follows:

> "It is contended by the learned counsel for the appellant that the claim of the appellant for assignment was only under Rule 4 of the Kerala Land Assignment Rules, 1964, on the ground of beneficial enjoyment of adjoining registered holdings. Since this application is not being considered as a result of the judgment of the learned Single Judge, the appeal has been preferred.
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> 2. Since the judgment under appeal does not deal with the assignment under Rule 4 on the ground of beneficial enjoyment of adjoining registered holdings, there is no necessity to interfere with the judgment under appeal.
>
> We dismiss the appeal with the observation that

> the revenue authorities are not precluded from independently considering the application of the appellant under Rule 4 of the Kerala Land Assignment Rules, 1964 on the ground of beneficial enjoyment of adjoining registered holdings, notwithstanding the judgment of the learned Single Judge in O.P.No.4633 of 1997."

At the time when the judgment dated 23.9.2002 was rendered, it was apparently not brought to the notice of the Court that another writ appeal was disposed of earlier as per Ext.P8 judgment.

3. The claim of the petitioner is for assignment of the government land on the ground that he is a landless person. The petitioner has submitted Ext.P15 application dated 15.8.2001 for assignment on registry of the land. The claim of the petitioner is disputed by the seventh respondent. The seventh respondent's claim is that she is in possession of the adjoining land and for the beneficial enjoyment of that land, she requires the land in question to be assigned to her. These are rival claims. The application filed by the petitioner is to be disposed of by the Tahsildar whereas the application for assignment for beneficial enjoyment of the land filed by the seventh respondent is to be disposed of by the Revenue Divisional Officer. The Revenue Divisional Officer being a superior authority, we are of the opinion that the claims could be considered by the Revenue Divisional Officer with notice to both the parties. If the Revenue Divisional Officer finds that the seventh respondent is

entitled to get assignment of the land on the ground of beneficial enjoyment, he would be free to pass an order on that application. If the Revenue Divisional Officer finds that the application of the seventh respondent is not liable to be allowed, necessarily, he has to forward the application filed by the petitioner to the Tahsildar concerned for passing appropriate orders. In such an event, the Tahsildar shall dispose of the application submitted by the petitioner after complying with the directions in the judgment dated 22nd July, 1997 in O.P.No.4633 of 1997. By adopting such a procedure, interest of both parties would be protected. It is made clear that the petitioner (K.Sadasivan) and the seventh respondent (Syamala Devi) shall be entitled to file statements and produce documents before the Revenue Divisional Officer and if occasion arises, as mentioned above, before the Tahsildar and the authority concerned shall afford an opportunity of being heard to them.

In modification of the judgment rendered by the learned single Judge, the Writ Appeal is disposed of in the above terms.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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